

1 omission, neglect, or misconduct of CAWCD or its employees in the manner or method of
2 performing any construction, care, operation, maintenance, supervision, examination,
3 inspection, or other duties of CAWCD in order to undertake activities set forth in Exhibit "B."

4 (f) Notwithstanding subparagraphs 10(b), (c) and (d) above, and except as
5 provided in subparagraph 10(e) above, the releases contained in this Stipulation shall not apply to
6 third party claims that have been made or that may be made in the future against CAWCD or the
7 United States alleging personal injury, death or property damage caused by the design,
8 construction or operation of the CAP. CAWCD and the United States reserve all rights and
9 defenses with regard to such third party claims. It is further agreed that the releases contained in
10 this Stipulation do not modify or affect the provisions of Article 6(f) of the O&M Transfer
11 Contract or section 8 of Exhibit A to the O&M Transfer Contract.

12 (g) This Stipulation is not intended to be, and should not be construed as, an
13 admission of liability or fault on the part of CAWCD or the United States, their agents, servants,
14 officers, directors, or employees, and they specifically deny that they are liable to one another
15 except as provided herein. This Stipulation is entered into by all Parties for the purpose of
16 compromising disputed claims and avoiding the expenses and risks of further litigation.

17 (h) The persons signing this Stipulation warrant and represent that they possess
18 full authority to bind the Parties on whose behalf they are signing to the terms of the settlement.

19 11. The following non-binding ADR process shall be followed for any dispute arising
20 under subparagraphs 4(e), 4(g), 6(b), 6(f), 6(g) and 8(g) of this Stipulation:

21 (a) CAWCD and the United States shall meet and confer about the issue or
22 issues in an attempt to resolve the dispute. If there are issues that cannot be resolved by
23 CAWCD and the United States, each shall appoint one arbitrator to a panel of arbitrators which
24 will decide the dispute. The appointment of the two arbitrators will occur within 30 days of the
25 meeting referred to above.

26 (b) Arbitrators appointed to the arbitration panel shall be skilled and experienced
27 in the field or fields pertaining to the dispute. The two selected arbitrators shall meet within
28 30 days of their appointment, and at their first meeting they shall appoint a third neutral arbitrator

1 to complete the arbitration panel. The third arbitrator shall act as chairperson of the arbitration
2 panel and shall direct the arbitration proceedings.

3 (c) The arbitration process shall be limited to the issue or issues submitted by
4 CAWCD or the United States. The arbitration panel shall not rewrite, amend, or modify this
5 Stipulation, the 1988 Contract, the Operating Agreement, or any other agreement or contract
6 between the Parties.

7 (d) There shall be no discovery beyond the information and documents made
8 available during the informal meet and confer process provided for in subparagraph 11(a) and
9 the general exchange or availability of records provided for within the 1988 Contract.

10 (e) No formal evidentiary hearing shall be provided unless one is requested by
11 either CAWCD or the United States in writing, at the same meeting that the neutral arbitrator is
12 appointed. Assuming that no hearing has been requested, the arbitration panel will meet as
13 deemed necessary by the panel and shall, in a manner it deems appropriate, receive evidence,
14 receive argument or written briefs from CAWCD and the United States, and otherwise gather
15 whatever information is deemed helpful by the panel. The arbitration process to be followed
16 shall be informal in nature, and CAWCD and the United States shall not be entitled to trial-type
17 proceedings under, for example, formal rules of evidence.

18 (f) In the event that either CAWCD or the United States requests a hearing, the
19 arbitration panel shall meet to receive evidence, receive argument and written briefs from
20 CAWCD and the United States as follows:

21 (i) The arbitration panel shall, within 5 days of the appointment of the
22 neutral arbitrator, schedule a date for a hearing which shall be held within 20 days of the
23 appointment of the neutral arbitrator.

24 (ii) Within 10 days of the appointment of the neutral arbitrator, CAWCD
25 and the United States shall each submit a brief of no longer than 15 pages setting forth its case.
26 The brief shall include discussion of all issues relevant to the party's case. Each party shall, as
27 an attachment to its brief, include declarations of not more than two experts and any relevant
28 factual witness. Declarations of expert witnesses must include all opinions to be elicited upon

1 direct testimony and a complete explanation of the basis of these opinions. Disputes with respect
2 to the sufficiency of declarations or the appropriateness of the testimony shall be resolved by the
3 arbitration panel who may allow the testimony or exclude it. All expert witnesses must be
4 available for cross-examination at the time of the arbitration hearing. Factual witnesses for
5 which a declaration is prepared shall be made available for cross-examination at the time of the
6 arbitration hearing only if requested by the other party.

7 (iii) Each party shall have the opportunity, within 5 days of the close of
8 hearing, to submit a closing brief not to exceed 10 pages. The closing brief shall be argument
9 with no additional factual evidence to be submitted.

10 (iv) There shall be no testifying witness on direct except for expert
11 witnesses, if any.

12 (v) Each party shall have a maximum of four hours to present its case in
13 total. This time shall include opening and closing statements, direct presentation and any cross-
14 examination of the other party's witnesses. Each party shall have the right to reserve part of its
15 time to present up to one hour of rebuttal testimony.

16 (vi) The matter shall be deemed submitted at the submission of closing
17 briefs.

18 (g) The panel of arbitrators shall render its final decision in the dispute within
19 60 days after the date of naming the third arbitrator. If the arbitrators disagree as to the
20 determination, any two of the three arbitrators may join to form a majority and the decision of
21 those two arbitrators will be final for the panel. The panel will issue a written decision for
22 CAWCD and the United States.

23 (h) If either CAWCD or the United States declines to accept the decision of the
24 arbitration panel, it may initiate an action in the appropriate Federal court within 60 days of the
25 issuance of the panel's written decision to obtain a judicial determination of the underlying
26 dispute. If an action is not filed within 60 days of the panel's decision, the decision of the panel
27 shall be deemed to be final and not subject to judicial review. The decision of the panel and
28 //

1 record of the arbitration shall not be privileged and may be submitted as part of the record by
2 either side in support of its case.

3 (i) All costs incurred by the arbitration panel shall be shared equally by
4 CAWCD and the United States, and the expenses of the arbitration panel shall be paid
5 expeditiously. These costs shall not be included as Fixed OM&R Costs, nor are they to be made
6 reimbursable or a cost billable to CAWCD.

7 (j) During the period of time in which a disagreement is being addressed in the
8 ADR process or appropriate judicial proceeding, CAWCD and the United States agree that no
9 default or breach of any agreement being addressed in the process will have occurred and that
10 there will be no basis for the termination of water deliveries or other similar punitive actions by
11 either party. The foregoing does not waive any claims for monetary penalties under
12 Article 9.10(a) of the 1988 Contract.

13 12. Except as provided for herein, the 1988 Contract remains in full force and effect,
14 including but not limited to the provisions of Articles 9.6(e) and 9.9. Article 10.9 of the 1988
15 Contract shall govern all obligations of the United States under this Stipulation. Except as
16 otherwise provided for herein, terms defined within the 1988 Contract that are used in this
17 Stipulation have been capitalized and shall have the meaning ascribed to them in the 1988
18 Contract. Notwithstanding the foregoing, to the extent that the 1988 Contract is inconsistent
19 with the provisions of this Stipulation, the provisions of this Stipulation shall govern. Nothing
20 in this Stipulation is intended to affect the rights of long-term contractors and subcontractors of
21 Project Water service or any Colorado River water right holders. Nothing in this Stipulation is
22 intended to preclude CAWCD and the United States from entering into additional agreements or
23 amendments to existing agreements regarding the subjects addressed in this Stipulation. This
24 Stipulation and all actions authorized hereunder are subject to Federal law, including but not
25 limited to the Reclamation Reform Act of 1982 and any exceptions thereto, State of Arizona law,
26 and such rules and regulations as the Secretary may deem appropriate, as those laws and rules
27 and regulations may be amended, and, except as provided herein, the 1988 Contract. Nothing in

28 //

1 this Stipulation may be used in any way to control the CAP water allocation process or affect its
2 interpretation.

3 13. The Parties shall cooperate in carrying out the provisions and intent of this
4 Stipulation.

5 14. Each Party shall pay for its own costs, including attorney fees and expert fees in
6 this litigation. These costs shall not be included as Fixed OM&R Costs; nor are they to be made
7 reimbursable or made part of costs billable to CAWCD.

8 15. This Stipulation may be executed by the Parties in counterparts.

9 16. As between CAWCD and the United States, this Stipulation shall be effective upon
10 and the "date of this Stipulation" for the purposes herein shall be the date of entry of an Order of
11 this Court approving the Stipulation in accordance with the Joint Motion of CAWCD and the
12 United States for Stay and Approval of Stipulation to which this Stipulation is appended.

13
14 De CUIR & SOMACH
15 A Professional Corporation
16 400 Capitol Mall, Suite 1900
17 Sacramento, CA 95814

18 Dated: May 3, 2000

19 By: 
20 Stuart L. Somach

21 and

22 SNELL & WILMER
23 One Arizona Center
24 400 East Van Buren
25 Phoenix, AZ 85004-0001

26 Dated: May 3, 2000


27 By: 
28 Robert B. Hoffman

Attorneys for Central Arizona Water
Conservation District

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CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FEDERAL REPAYMENT OBLIGATION

EXHIBIT A

	Beginning Balance Interest Bearing		Beginning Balance Non-Interest Bearing		Payment Due		
	Stage I	Stage II	Stage I	Stage II	Principal	Interest	Total
1994	917,744,685		339,439,815		12,571,845	8,945,716	21,517,561
1995	905,194,412		339,418,243		12,571,845	30,251,597	42,323,442
1996	893,625,867		338,414,943		12,571,845	29,864,976	42,436,821
1997	882,118,224	286,755,315	337,350,741	106,060,185	16,500,000	32,275,538	48,775,538
1998	870,744,611	282,827,160	336,152,509	106,060,185	16,500,000	38,662,369	55,052,369
1999	859,339,950	278,899,005	334,985,325	106,060,185	16,500,000	38,039,946	54,539,946
2000	847,695,473	274,970,850	334,057,857	106,060,185	16,500,000	37,518,509	54,018,509
2001	836,242,764	271,042,695	332,938,821	106,060,185	20,271,554	37,005,480	57,277,034
2002	820,999,366	267,114,540	331,838,821	106,060,185	20,271,554	36,364,767	56,636,320
2003	805,755,967	263,186,385	330,738,821	106,060,185	20,271,554	35,724,053	55,995,607
2004	790,512,569	259,258,230	329,638,821	106,060,185	21,450,000	35,083,340	56,533,340
2005	775,269,170	254,151,629	328,538,821	106,060,185	21,450,000	34,403,243	55,853,243
2006	759,725,772	249,045,027	327,738,821	106,060,185	21,450,000	33,713,120	55,163,120
2007	744,182,373	243,938,426	326,938,821	106,060,185	21,450,000	33,022,997	54,472,997
2008	728,638,975	238,831,824	326,138,821	106,060,185	25,221,554	32,332,874	57,554,428
2009	709,324,023	233,725,223	325,338,821	106,060,185	25,221,554	31,516,706	56,738,259
2010	690,009,071	228,618,621	324,538,821	106,060,185	25,221,554	30,700,537	55,922,091
2011	670,694,119	223,512,020	323,738,821	106,060,185	26,400,000	29,884,369	56,284,369
2012	651,379,167	217,226,972	322,938,821	106,060,185	26,400,000	29,028,817	55,428,817
2013	632,064,215	210,941,924	322,138,821	106,060,185	26,400,000	28,173,265	54,573,265
2014	612,749,263	204,656,876	321,338,821	106,060,185	26,400,000	27,317,713	53,717,713
2015	593,434,311	198,371,828	320,538,821	106,060,185	31,428,738	26,462,161	57,890,899
2016	569,090,621	192,086,780	319,738,821	106,060,185	31,428,738	25,438,549	56,867,287
2017	544,746,931	185,801,732	318,938,821	106,060,185	31,428,738	24,414,938	55,843,674
2018	520,403,241	179,516,684	318,138,821	106,060,185	33,000,000	23,391,324	56,391,324
2019	495,859,551	171,660,374	317,538,821	106,060,185	33,000,000	22,308,516	55,308,516
2020	471,315,861	163,804,064	316,938,821	106,060,185	33,000,000	21,225,708	54,225,708
2021	446,772,171	155,947,754	316,338,821	106,060,185	33,000,000	20,142,900	53,142,900
2022	422,228,481	148,091,444	315,738,821	106,060,185	40,543,107	19,060,092	59,603,199
2023	390,141,684	140,235,134	315,138,821	106,060,185	40,543,107	17,725,193	58,268,300
2024	358,054,887	132,378,824	314,538,821	106,060,185	40,543,107	16,390,295	56,933,402
2025	325,968,090	124,522,514	313,938,821	106,060,185	42,900,000	15,055,396	57,955,396
2026	293,731,293	114,309,311	313,488,821	106,060,185	42,900,000	13,636,717	56,536,717
2027	261,494,496	104,096,108	313,038,821	106,060,185	42,900,000	12,218,038	55,118,038
2028	229,257,699	93,882,905	312,588,821	106,060,185	42,900,000	10,799,359	53,699,359
2029	197,020,902	83,669,702	312,138,821	106,060,185	44,157,185	9,380,680	53,537,864
2030	163,526,920	73,456,499	311,688,821	106,060,185	44,157,185	7,919,986	52,077,170
2031	130,032,939	63,243,296	311,238,821	106,060,185	44,157,185	6,459,292	50,616,476
2032	96,538,957	53,030,093	310,788,821	106,060,185	44,550,000	4,998,598	49,548,598
2033	63,024,176	42,424,074	310,359,621	106,060,185	44,550,000	3,524,080	48,074,080
2034	29,488,594	31,818,056	309,951,221	106,060,185	44,550,000	2,048,868	46,598,868
2035	-	21,212,037	305,495,834	106,060,185	44,550,000	708,908	45,258,906
2036	-	10,606,019	271,551,852	106,060,185	44,550,000	354,453	44,904,453
2037	-	-	237,607,871	106,060,185	44,550,000	-	44,550,000
2038	-	-	203,663,889	85,454,167	44,550,000	-	44,550,000
2039	-	-	169,719,908	84,848,148	44,550,000	-	44,550,000
2040	-	-	135,775,926	74,242,130	44,550,000	-	44,550,000
2041	-	-	101,831,945	63,636,111	44,550,000	-	44,550,000
2042	-	-	67,887,963	53,030,093	44,550,000	-	44,550,000
2043	-	-	33,943,982	42,424,074	44,550,000	-	44,550,000
2044	-	-	-	31,818,056	10,606,019	-	10,606,019
2045	-	-	-	21,212,037	10,606,019	-	10,606,019
2046	-	-	-	10,606,019	10,606,019	-	10,606,019
					1,650,000,000	973,384,980	2,623,384,980

CENTRAL ARIZONA WATER CONSERVATION DISTRICT
CREDIT TO FEDERAL REPAYMENT OBLIGATION

77

	Exhibit A Post Due Next Jan. 15	Cash Payments	MYD Advance	Deficiencies	Employee Related	LBDF Navajo	LBDF Hesper	Net Misc. Revenues	B.O.R. Over/Under	Interest on Credit Bal.	Total Credits	(Over) Under Payments	Credit Balance	AZ Interest
1993	21,817,561	-	17,412,099	-	2,069,251	5,993,263	859,460	282,440	(4,979)	-	21,817,561	(16,930,065)	(16,930,065)	6.20%
1994	42,923,442	34,331,708	44,268,275	168,368	-	26,319,132	3,732,431	9,731	(40,287)	-	58,483,507	11,424,574	(4,205,491)	6.39%
1995	42,438,821	-	-	357,076	-	26,319,132	5,818,477	(33,134)	(126,871)	94,189	31,012,247	(7,366,405)	(17,579,896)	5.75%
1996	48,775,538	10,880,478	-	22,438,705	-	19,391,170	4,281,017	(41,170)	(222,623)	241,816	55,140,943	(869,887)	(12,440,793)	6.92%
1997	65,052,289	18,549,989	-	6,881,720	-	23,166,203	7,183,485	67,748	(140,666)	894,897	85,222,355	(16,399,921)	(27,735,804)	6.12%
1998	64,539,949	38,443,386	-	2,172,381	-	21,885,221	8,731,690	20,808	(189,304)	761,376	89,234,967	(312,807)	(28,948,811)	6.87%
1999	64,019,408	35,088,378	-	3,948,017	-	17,033,946	6,976,578	302,577	(606,370)	1,826,092	84,332,316	(23,445,313)	-	6.87%
Total		127,772,946	31,678,264	35,942,286	2,869,251	112,898,485	32,193,236	589,000	(1,238,800)	4,397,849	347,213,797	(23,445,313)	-	6.87%

← Credit as of 1-1-00

EXHIBIT A-1

Exhibit B
Project Construction Completion List
Central Arizona Project
January 28, 2000

CAWCD will complete to receive Repayment Credit the following items:

<u>Item Description</u>	<u>Last Year Credit Allowed</u> (Calendar Year)	<u>Total Credit Not to Exceed</u> (\$ in Thousands)
Siphon Tendon Repair Hassayampa/Centennial/Jackrabbit	2005	\$3,400
Hassayampa River Erosion Protection	2002	1,650
Mark Wilmer Pumping Plant Impellers	2003	3,900
Completion of Standing Operating Procedures	2002	906
ADA Modifications at Project Headquarters	2002	100
Cathodic Protection Phases II	2001	3,000
Cathodic Protection Phases III	2002	2,300

United States will complete the following items as budget allows:

Hayden-Rhodes Aqueduct

Complete Litigation on Siphon Defects
Activities necessary to close out all open construction contracts

New Waddell Dam

Misc. Lands and Rights Activities
North Entry Road
MWD Conference Center
FWL Coordination Act
Fish Liminology Follow-up
Cook's Lake
Archaeology Survey Report
Electronic Archaeology Database
Archaeological Road Barrier at site 99
Activities necessary to close out all open construction contracts
Complete final reports and achieving

Modified Roosevelt Dam

First Fill
Stream Gaging
Stewart Wash Bridge Slope Protection
Marina Store Removal-Intersection for Ranger Station
Platform Mound Archaeological Study
Design F/I Museum Exhibits
NAGPRA Burial of Remains
Heritage Education Program
FWL Coordination Act
Bald Eagle Nest Watch
Allotment Management Plan/Wildlife Mitigation
Tonto Creek Riparian Monitoring
SWF Banding/Genetics
SWF GIS Database/Update
SWF Aerial Photography
SWF Habitat Monitoring

SWF San Pedro Preserve Management
SWF Cowbird Management
SWF Nest Monitor/Dispersal Count
SWF Management Fund
Activities necessary to close out all open construction contracts
Complete final reports and achieving

Tucson Aqueduct
Lands and Rights for Del Bac Transmission Line
Complete Del Bac Transmission Line
Activities necessary to close out all open construction contracts

Other Project Costs
Canal Vegetation Study
CAP Repository Design/Construction
CAP Repository Curation/O&M
Lands and Rights for Native Fish Protection
Nonnative Fish Eradication Funding Transfers
Native Fish Conservation Funding Transfers
Aravaipa Fish Barriers
Native Fish Public Information and Education Program
San Pedro Fish Barriers
Section 7 Santa Cruz Fish Opinion Activities
Archiving of records as necessary
Financial closeout of construction

Navajo Project Participation
Installation of Scrubbers at Navajo Generating Station

Recreation Development
Grant with City of Phoenix
Hayden-Rhodes Canal Trails - Federal/Nonfederal
Tucson Recreation - Federal/Nonfederal
Tucson Canal Trails - Federal/Nonfederal

EXHIBIT C

Revised 2/16/2000

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

OPERATING AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FOR OPERATION AND MAINTENANCE
OF THE CENTRAL ARIZONA PROJECT

1. Preamble

THIS OPERATING AGREEMENT, hereinafter referred to as "Agreement," made as of this ____ day of _____, 2000, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Reclamation Extension Act of August 13, 1914 (38 Stat. 686), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Movable Property Transfer Act of July 29, 1954 (68 Stat. 580), as amended, and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as the "Federal Reclamation Laws," between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as "Reclamation," and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a district created, organized, and existing under and by virtue of the laws of the State of Arizona, hereinafter referred to as the "District";

WITNESSETH THAT:

2. Explanatory Recitals

2.1 WHEREAS, the District and the United States entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "1988 Contract," which provides, among other things, for the United States to construct the Central Arizona Project, hereinafter

1 referred to as "CAP," and for the District to repay to the United States the construction costs of the CAP
2 allocated to reimbursable functions; and

3 2.2 WHEREAS, the United States and the District entered into Contract No. 7-07-30-W0167,
4 dated August 5, 1987, for the transfer of OM&R of CAP facilities, hereinafter referred to as the "O&M
5 Transfer Contract"; and

6 2.3 WHEREAS, Article 5 of the O&M Transfer Contract provides that the District and the United
7 States shall enter into an operating agreement to cover details of Project operations, maintenance, OM&R
8 funding, and environmental compliance and commitments applicable to the Transferred Works; and

9 2.4 WHEREAS, the United States has constructed the CAP for storage, diversion, carriage,
10 and distribution of Project Waters for agricultural, municipal, industrial, domestic, and other purposes; and

11 2.5 WHEREAS, the United States, Reclamation, and the District, hereinafter "the Parties,"
12 desire to define and prescribe their respective responsibilities for OM&R of the Transferred Works; and

13 2.6 WHEREAS, paragraph 7 of the Stipulation and Order for Judgment, executed by the
14 District, the United States, and intervenors in Central Arizona Water Conservation District v. United States
15 of America, Consolidated Action No. CIV. 95-625 (EHC) & No. CIV. 95-1720-PHX-EHC (D. Ariz.),
16 hereinafter referred to as the "Stipulation," provides that the District and the United States shall enter into
17 an Operating Agreement setting forth the terms and conditions for the OM&R of the Transferred Works.

18 2.7 NOW THEREFORE, the Parties agree as follows:

19 3. Purpose of Agreement

20 3.1 The purpose of this Agreement is to define and prescribe, pursuant to Article 5 of the O&M
21 Transfer Contract, and paragraph 7 of the Stipulation, the District's and Reclamation's responsibilities for
22 CAP OM&R and administration of associated Federal land interests.

1 3.2 All provisions of the Stipulation, as presently constituted or amended, shall apply to this
2 Agreement and shall be controlling in the event of conflict between the Stipulation and this Agreement
3 unless otherwise expressly provided herein.

4 3.3 All provisions of the O&M Transfer Contract shall apply to this Agreement and shall be
5 controlling in the event of conflict between the O&M Transfer Contract and this Agreement unless
6 otherwise expressly provided.

7 3.4 The Stipulation has superseded the Article 7 funding provisions of the O&M Transfer
8 Contract.

9 4. Definitions

10 4.1 Definitions included in the Stipulation and the 1988 Contract are applicable to this
11 Agreement, with the following exceptions:

12 4.1.1 All references to the designation "Granite Reef Aqueduct" in the 1988 Contract shall
13 be replaced by the designation "Hayden-Rhodes Aqueduct."

14 4.1.2 All references to the designation "Salt Gila Aqueduct" in the 1988 Contract shall be
15 replaced by the designation "Fannin-McFarland Aqueduct."

16 4.2 For the purposes of this Agreement and when used herein, unless otherwise distinctly
17 expressed or manifestly incompatible with the intent hereof, the terms:

18 4.2.1 "Contracting Officer" means the Regional Director of the Lower Colorado Region,
19 Bureau of Reclamation, or the duly authorized representative.

20 4.2.2 "OM&R" means the care, operation, maintenance and replacement of Transferred
21 Works.

22 4.2.3 "Project Lands" means lands or land interests acquired or withdrawn by the United
23 States for the construction, operation, and maintenance of the features of the CAP.

1 4.2.4 "Project Waters" means all Project Water as defined in Paragraph 5 of the
2 Stipulation plus the grandfathered water rights assigned to the District in connection with the Transferred
3 Works.

4 4.2.5 "Standing Operating Procedures" or "SOPs" means the primary controlling
5 documents (with associated supporting documents) which are the complete, accurate, current and
6 structure-oriented operating instructions for the CAP control center, CAP aqueduct and each CAP
7 pumping plant or dam and reservoir and their related structures. The SOPs contain information and
8 instructions necessary for personnel to perform their duties.

9 4.2.6 "Substantial Change" means modifications which would significantly alter the
10 operational capabilities or performance of the Transferred Works. This definition supersedes the definition
11 of substantial change in the O&M Transfer Contract.

12 4.2.7 "Transferred Works" means those project works as transferred under the
13 sequentially numbered transfer notices issued pursuant to the O&M Transfer Contract and the 1988
14 Contract and included in Exhibit A hereto.

15 5. Modifications to this Agreement

16 5.1 This Agreement shall be reviewed by the Parties in the light of actual operating experience.
17 Modifications to this Agreement shall be evidenced by amendment of this Agreement.

18 6. District's Failure to Comply with Terms of this Agreement

19 6.1 If the Contracting Officer finds the District is operating the Transferred Works or any part
20 thereof in violation of this Agreement, the United States shall notify the District of the violation and provide
21 the District a reasonable opportunity of not less than 60 days to cure the violation or provide an agreed
22 upon plan to cure the violation.

1 6.2 If the violation is not cured as provided in 6.1, the United States may take over from the
2 District the OM&R responsibility of the Transferred Works as provided in Article 6(h) of the O&M Transfer
3 Contract, in which case the provisions of Article 6(h) shall apply.

4 7. OM&R Responsibilities for the Transferred Works

5 7.1 By letters dated April 29, 1993, September 1, 1993, September 10, 1993, October 7, 1993,
6 March 25, 1994, and June 29, 1994, Reclamation transferred OM&R responsibility for certain features of
7 the CAP to the District. In the future, OM&R responsibility for other Transferred Works and Project Lands
8 may be transferred by a subsequent letter(s). Such transfers shall include such right of possession as
9 shall be necessary or convenient for the OM&R of the Transferred Works by the District as hereinafter
10 provided.

11 7.2 District Responsibilities:

12 The District is the operating agent for the Transferred Works and shall perform the following
13 activities:

14 7.2.1 Perform the OM&R of the Transferred Works, as provided for in Article 6(b) of the
15 O&M Transfer Contract. Submit quarterly reports to Reclamation similar to reports provided to the
16 District's Board listing OM&R expenses and comparing those actual expenses to budgeted expenses.

17 7.2.2 Ensure the OM&R program will include all features and activities necessitated by
18 the commitments made by the United States for the protection of the environment as listed in Exhibit B,
19 attached hereto.

20 7.2.3 Ensure the OM&R program will include all environmental assessments, mitigations
21 and remediations regarding hazardous materials including, but not limited to: solid waste assessments,
22 hazardous materials/waste storage, transportation and disposal, waste minimization, recycling, pollution
23 prevention, aboveground and underground tank management, spill/release reporting, emergency
24 contingencies, employee training, facility discharges, pesticide management, facility design, facility

1 auditing, site assessments, mitigations, and remediations/cleanups, in accordance with Federal, State,
2 and local laws, rules and regulations. The District will make the required notifications in accordance with
3 Federal, State, and local laws, rules and regulations, of any hazardous materials or solid waste spills or
4 releases on Project Lands and will provide a copy of any written notification to Reclamation.

5 7.2.4 Make deliveries of Project Waters and collect payments therefor. For the purpose
6 of Reclamation's administration of the Reclamation Reform Act of 1982, other Federal Reclamation laws,
7 and agency regulatory requirements, the District shall coordinate and consult in advance with Reclamation
8 regarding such contracting and delivery of Project Waters for agricultural purposes.

9 7.2.5 In accordance with article 6(c) of the O&M Transfer Contract, make promptly any
10 and all repairs to the Transferred Works, which, in the opinion of the Contracting Officer, are deemed
11 necessary for the proper OM&R of the same. As-built drawings will be maintained by the District to reflect
12 the current status of the Transferred Works and copies will be made available to Reclamation upon
13 request.

14 7.2.6 For Project Waters delivered through use of the Transferred Works, perform
15 storage, delivery and reporting obligations of the United States under existing CAP delivery contracts
16 including any extensions thereof, and with respect to future CAP delivery contracts as to which the District
17 is not a party, perform said obligations of the United States not inconsistent with (a) existing CAP delivery
18 contracts as to which the District is not a party, (b) the Stipulation, (c) the 1988 Contract and (d) priorities
19 of Project Water. Reclamation shall consult with and seek the concurrence of the District prior to
20 executing any such contract. If after such consultation the District fails to concur and Reclamation
21 executes such contract, the District shall have the right to arbitrate (i) whether or not the additional
22 obligation is consistent with "a" through "d" above or (ii) the reasonableness of the additional cost pursuant
23 to the arbitration provisions of Paragraph 11 of the Stipulation.

1 7.2.7 Administer groundwater rights associated with Project Waters as identified in Exhibit
2 C, which is attached hereto and by reference made a part hereof. Any filing fees or penalties levied for
3 noncompliance with the groundwater rights shall be the responsibility of the District.

4 7.2.8 Issue rights-of-entry, permits and licenses for periods of 25 years or less for the use
5 of Project Lands in accordance with Article 6(e) of the O&M Transfer Contract and Exhibit D hereto. This
6 Agreement constitutes Reclamation's written consent as required under Article 6(e) of the O&M Transfer
7 Contract under the terms, limitations and conditions set forth in Exhibit D. The District shall forward to the
8 Area Manager, Phoenix Area Office, a copy of all documents evidencing such rights-of-entry, permits or
9 licenses at the time issued. The District shall not execute renewable rights-of-entry, permits or licenses for
10 use of federally-owned land that, by exercising a right to renew, will provide options to use land for
11 cumulative periods greater than twenty-five years. The District shall also submit to the Area Manager an
12 annual accounting of revenues it collected from rights-of-entry, permits or licenses during the fiscal year.

13 7.2.9 Provide for an OM&R budget process that permits meaningful participation of
14 Reclamation and water users in the budget process prior to adoption of the budget. This process includes
15 an open meeting with an opportunity to comment sufficiently in advance of adoption of the budget to allow
16 the District to consider comments submitted. The District shall make information relating to the budget
17 and OM&R costs available to Reclamation and water users prior to the open meeting. Provide to
18 Reclamation a copy of the budget as adopted.

19 7.3 Reclamation Responsibilities

20 7.3.1 If the District neglects, fails, or is unable to make repairs or replacements or correct
21 noted deficiencies, the United States may cause the repairs or replacements to be made, in accordance
22 with Article 6(c) of the O&M Transfer Contract.

23 7.3.2 Reclamation shall administer recreation programs serving the CAP purposes of
24 conservation and development of fish and wildlife resources and enhancement of recreation opportunities.

1 In furtherance of such purposes, Reclamation will negotiate and administer land use agreements with
2 local entities. Reclamation shall consult with and seek the concurrence of, the District prior to executing
3 any such agreements that might impose additional OM&R obligations on CAP water users. If after such
4 consultation the District fails to concur and Reclamation executes such contract, the District shall have the
5 right to arbitrate the reasonableness of the additional obligation pursuant to the arbitration provisions of
6 Paragraph 11 of the Stipulation.

7 7.3.3 By October 10 each year, Reclamation shall provide the District with annual water
8 delivery schedules for the Indian contractors. By November 15 each year, the District shall provide written
9 confirmation of the Indian water delivery schedules. If the District cannot confirm that all scheduled Indian
10 water can be delivered, it shall meet and confer with Reclamation to determine the water deliveries. If
11 mutually agreed, a direct scheduling relationship with the ultimate user may be worked out by Reclamation
12 and the District provided that such relationship gives notice to Reclamation of scheduled deliveries.

13 8. Funding/Costs and Accounting

14 8.1 The District shall perform the following activities:

15 8.1.1 Advance funds to Reclamation on a quarterly basis pursuant to paragraph 6(g) of
16 the Stipulation to cover the projected costs on the basis of the annual work plan which will be developed in
17 accordance with Article 8.2.1 herein.

18 8.1.2 Fund all OM&R costs for the Transferred Works.

19 8.1.3 The District shall submit to Reclamation all fees, net of expenses, collected from
20 rights-of-entry, permits, licenses and other miscellaneous revenues from the Transferred Works, and
21 Reclamation shall deposit those funds into the Lower Colorado River Basin Development Fund.

22 8.2 Reclamation shall perform the following activities:

23 8.2.1 Based upon a five year forecast, develop an annual work plan which estimates the
24 annual funding anticipated to be necessary for the administration of the 1988 Contract, the O&M Transfer

1 Contract, all long-term water delivery contracts and subcontracts, all work related to the general oversight
2 of the District's OM&R program for the Transferred Works, and any OM&R activities and oversight
3 performed by or on behalf of Reclamation. A draft work plan will be submitted to the District by August 1
4 of each year. The final work plan will be submitted to the District by October 1 of each year. Reclamation
5 will bill the District quarterly for the projected costs of the annual work plan. Bills will be submitted 30 days
6 in advance of the required payment date.

7 8.2.2 Reclamation will use all funds obtained from the recreation partners/sponsors to
8 provide oversight of the recreation program. To the extent covered by these funds, the costs of
9 Reclamation's oversight of the recreation program will not be chargeable to the District. Reclamation will
10 use its best efforts, through future contractors and other means, to recover the costs from the recreation
11 partners/sponsors.

12 8.3 Categories of expenses that may be included in the work plan and shall not be disputed by
13 the District as provided in 6(g)(ii) of the Stipulation provided the scope and character of charges allocated
14 thereto do not go beyond the scope and character of charges included in such category through 1999,
15 include the following:

16 8.3.1 All categories of expenses previously paid by the District without dispute.

17 8.3.2 Colorado River Operations as defined in Exhibit E. (Note: Exhibit E is a version of
18 a Reclamation document.)

19 8.3.3 Administration, oversight, and OM&R Costs of recreation contracts, lands, facilities,
20 or programs that are not specifically covered in agreements with entities other than the District.

21 8.3.4 OM&R and monitoring costs related to Endangered Species Act or Biological
22 Opinion that have not been overturned by court. Reclamation shall use its best efforts to consult with the
23 District prior to incurring costs associated with general environmental, Endangered Species Act ("ESA") or
24 National Environmental Policy Act ("NEPA") compliance. In any event, the United States will consult with

1 the District regarding all costs associated with general environmental, ESA or NEPA compliance. For the
2 purposes of any "consultation" pursuant to Section 7(a)(2) of the ESA, with respect to "actions associated
3 with the CAP, the District shall be treated as if it were an "applicant" under the ESA, 16 U.S.C. § 1532(12),
4 50 C.F.R. § 402.02.

5 8.3.5 Field and related work associated with administration, oversight and OM&R costs of
6 archeological and historical resources located on the Transferred Works.

7 8.3.6 Environmental assessment work for exchange contracts. Reclamation shall use its
8 best efforts to consult with the District prior to incurring costs associated with such environmental
9 assessments and in any event will use its best efforts to recover in advance its costs from the entity
10 seeking to achieve the exchange.

11 8.4 In the future, other categories of costs not specifically identified in Article 8.3 may be
12 included in the work plan. Reclamation and the District will discuss the reasonableness of those
13 categories and costs in the work plan process and, if not resolved in that process, may be disputed as
14 provided in 6(g)(ii) of the Stipulation.

15 8.5 Reclamation will not include in the work plan costs associated with administration,
16 oversight, or O&M of Indian or non-Indian distribution systems or related contracts or for which any other
17 entity is liable under a construction, repayment, water service, or other third party contract.

18 9. Standing Operating Procedures

19 9.1 The District shall review Standing Operating Procedures at least annually. Procedure
20 changes or deviations shall be reported to Reclamation before implementation. The District shall send
21 notice of such proposed and implemented deviations to the Area Manager, Phoenix Area Office, who will
22 approve, disapprove, or comment. The District shall obtain Reclamation's advanced written approval of
23 any procedure change which could affect the safety of the Transferred Works. During emergencies or
24 critical operating conditions, the District may obtain oral approval from the Area Manager, Phoenix Area

1 Office. Any modifications made during emergency operations that are intended to be permanent shall
2 follow the written approval process described above after the emergency is over.

3 10. Examination and Inspection of Transferred Works

4 10.1 Reclamation may, from time to time, examine the District's books, records, and reports and
5 the Transferred Works being operated by the District to determine the condition of the Transferred Works,
6 and the adequacy of the OM&R and dam safety programs, and any water conservation program as
7 provided for in Articles 6(g) and 8(a) of the O&M Transfer Contract. Further, Reclamation may examine
8 any or all of the Transferred Works or CAP facilities which were constructed by the District with funds
9 advanced or reimbursed by the United States as provided for in Article 8(a) of the O&M Transfer Contract.
10 Whenever reasonably possible, any such examinations shall be coordinated and conducted during the
11 District's regular maintenance activities.

12 10.2 Reclamation may, or the District may request Reclamation to, conduct special inspections
13 of any Project Works being operated by the District and special audits of the District's books and records
14 to ascertain the extent of any OM&R deficiencies, to determine the remedial measures required for their
15 correction, and to assist the District in solving specific problems, as provided for in Article 8(b) of the O&M
16 Transfer Contract. Except in an emergency, any special inspection or audit shall be made only after
17 written notice thereof has been delivered to the District by Reclamation, as provided for in Article 8(b) of
18 the O&M Transfer Contract. The District shall provide access to the Transferred Works and the District's
19 books and records, operate any equipment, and be reasonably available to assist in an examination,
20 inspection, or audit as provided for in Article 8(c) of the O&M Transfer Contract.

21 10.3 Reclamation shall prepare reports based on the examinations, inspections, or audits, and
22 furnish copies of such reports and any recommendations to the District as provided for in Article 8(d) of
23 the O&M Transfer Contract. Within 30 days of receipt of the request for a schedule, the District shall
24 provide a written schedule for completing the recommendations.

1 10.4 Reclamation may, at any time, with advance notice to the District, examine the Transferred
2 Works and associated project rights of way, specifically to determine the adequacy of the District's OM&R
3 program related to environmental commitments. The District will be given the opportunity to participate in
4 these examinations. Reclamation will notify the District in writing of the results of these examinations
5 including any recommendations or requirements for correcting deficiencies found. Reclamation will include
6 an estimate of the cost of such examinations in its annual work plan provided in Article 8.2. Within 30
7 days of the request for a schedule, the District shall provide a written schedule for completing the
8 recommendations.

9 10.5 Reclamation shall coordinate and consult with the District in advance regarding the
10 anticipated costs to perform any examinations as part of the Reclamation work plan referred to in Article
11 8.2.1. Reclamation's costs for the activities in 10.1 through 10.4 shall be included in the work plan except
12 for unanticipated special or emergency inspections or audits.

13 10.6 Reclamation may provide the State of Arizona an opportunity to observe and participate, at
14 the State of Arizona's expense, in the examinations and inspections of Transferred Works which are
15 covered under the Reclamation's dam safety program as provided for in Article 8(f) of the O&M Transfer
16 Contract. The State of Arizona may be provided copies of reports and any recommendations relating to
17 such examinations and inspections.

18 10.7 The District will make facilities available to the United States for public relations activities.
19 Reclamation will consult and coordinate with the District prior to scheduling such activities.

20 11. Agreements Affecting Project Operations

21 11.1 The operation of New Waddell Dam will be in accordance with any future agreement with
22 respect to the OM&R of New Waddell Dam, Reservoir and related facilities.

23 11.2 The operation of the Snyder Hill/Black Mountain Pumping Plant will be in accordance with
24 the agreement titled "Agreement among the United States of America, the City of Tucson, and the Central

1 Arizona Water Conservation District Providing for the Operation, Maintenance, and Replacement of the
2 Snyder Hill and Black Mountain Pumping Plants and the Tucson Water Treatment Plant," Agreement No.
3 2-MOA32-00040, which is attached hereto as Exhibit F.

4 11.3 The administration of the right-of-way for the Salt River siphon, which is located on the Salt
5 River Indian Reservation, shall be in accordance with Resolution No. SR-1574-93, between Reclamation
6 and the Salt River Pima-Maricopa Indian Community, which is attached hereto as Exhibit G.

7 11.4 The performance of the obligations of the United States with respect to maintaining a
8 diversion drainage channel as stipulated in the agreement titled *Junker v. United States*, (Cl. Ct. No. 251-
9 86), which is attached hereto as Exhibit H.

10 11.5 The operation of the right-of-way for recreation purposes will be in accordance with the
11 recreation agreements listed in Exhibit I, as that list may be supplemented or amended pursuant to 11.9.

12 11.6 The performance of the obligations of the United States and the District in accordance with
13 the Memorandum of Agreement Between Bureau of Reclamation and Fish and Wildlife Service, dated July
14 29, 1993, which is attached hereto as Exhibit J.

15 11.7 The performance of the obligations of the Arizona Projects Office, Bureau of Reclamation,
16 set forth in the Memorandum of Understanding Between the Soil Conservation Service and the Bureau of
17 Reclamation, dated September 9, 1993, which is attached hereto as Exhibit K.

18 11.8 The performance of the obligations of the United States under the Contract with the
19 Atchison, Topeka and Santa Fe Railway Company for Crossing Its Tracks and Right-of-Way Near
20 Vicksburg, Arizona, dated December 28, 1977, which is attached hereto as Exhibit L.

21 11.9 The agreements listed in 11.2 through 11.8 may not be all inclusive. Other agreements
22 that Reclamation has entered into, or may enter into, under which the District may perform OM&R
23 obligations will be provided to the District and the District may assume those obligations in accordance
24 with this Agreement.

1 11.10 Reclamation will notify the District of its intent to enter into or renegotiate existing OM&R
2 contracts of non-Transferred Works. Reclamation will provide the District an opportunity to comment on
3 such contracts prior to their finalization.

4 12. Modifications to Transferred Works

5 12.1 The District shall notify Reclamation of its intent to make any material physical change to
6 the Transferred Works, such as adding turnouts, crossings, or relocations. No later than 60 days after
7 receiving such notice, Reclamation shall determine whether the proposed change is a Substantial
8 Change. If the Contracting Officer determines that the proposed change is a Substantial Change, the
9 District may make the change only after receiving the Contracting Officer's written consent as provided in
10 Article 6(d) of the O&M Transfer Contract.

11 13. Meet and Confer

12 The parties hereto agree to meet and confer as necessary to resolve interagency differences with
13 respect to the implementation of this Agreement.

14 14. Release and Indemnity of the United States

15 As provided for in Article 6(f) of the O&M Transfer Contract, the District shall indemnify the United
16 States for, and hold the United States and all of its representatives harmless from, all damages resulting
17 from suits, actions, or claims of any character brought on account of any injury to any person or property
18 arising out of any act, omission, neglect, or misconduct of the District or its employees, in the manner or
19 method of performing any construction, care, operation, maintenance, supervision, examination,
20 inspection, or other duties of the District required under this Agreement.

21 15. Exhibits Made Part of this Agreement

22 Inasmuch as the Project Works transferred, environmental commitments, groundwater rights, and
23 administration of federal rights-of-way, may change during the term of this Agreement, they will be set
24 forth in the Exhibits as formulated or modified from time to time. The initial Exhibits A through L are

1 attached hereto, and each is incorporated into this Agreement in accordance with its respective provisions
2 until superseded by a subsequent exhibit.

3 16. Term

4 This Agreement shall become effective on _____, 2000, and shall remain in effect
5 until modified by mutual consent of the Parties hereto or until OM&R responsibility of the District for the
6 Transferred Works is terminated pursuant to the provisions hereof.

7 APPROVED:

8 BUREAU OF RECLAMATION:

9 By: _____
10 Regional Director

11 CENTRAL ARIZONA WATER CONSERVATION DISTRICT:

12 By: _____
13 General Manager

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